

Olc 78-0399/44
O'reilly

DDA 78-1193/1

21 March 1978

MEMORANDUM FOR: General Counsel

STAT ATTENTION : [REDACTED]
Assistant General Counsel

STAT FROM : [REDACTED]
Assistant for Information, DDA

SUBJECT : Proposed Intelligence Charter Legislation - Title II

REFERENCE : Multiple addressee memorandum from [REDACTED]
dtd 15 March 1978, Subject: S. 2525 - Proposed
Intelligence Charter Legislation - Title II
Restrictions (OGC 78-1620)

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1. The issues paper attached to reference has been reviewed by the Offices of the DDA which concur in general with the positions taken on the provisions of Title II. A few suggestions and comments follow.

2. Section 211 provides "general principles" governing the collection of information concerning U.S. persons and foreign persons within the U.S. Elsewhere in part (B), various collection techniques are specified in different sections, including Sections 215 and 222. The lists of techniques cited do not in every case include both national agency checks and police checks. We believe that whenever authorizable techniques are listed both these methods should be included. It might be more efficient to include a list of authorized investigative steps as part of Section 211.

3. Section 221 is the subject of issue #36 which includes the proposed addition of a requirement that information collected under the authority of Section 221 should be destroyed after one year if the subject of the collection is not actually used as a source of assistance. We understand that this addition is designed to make the legislation consistent with the procedures being developed for collection and retention of information under Executive Order 12036. We would prefer to see the legislation provide for controls over the use of the information rather than controls over the length of time it can be retained.

4. Section 222 was alluded to above. If the decision is made to include in each subsection of 222 a list of authorized collection techniques, it is imperative that both subsection (b) and subsection (c) authorize police checks and national agency checks.

5. Section 245 provides in subsection (b) for cooperation "with appropriate law enforcement agencies for the purpose of protecting the personnel and facilities...and conducting background checks on applicants for employment." We believe that this authorization should be extended to cover cooperation with law enforcement agencies "in the course of conducting investigations authorized by this Act."

6. Section 253 is the subject of issue #51 which suggests the addition of either "maliciously" or "recklessly" as a qualification for the phrase "authorizes or engages in." Elsewhere in the OLC and OGC commentaries on the charter legislation there has been an effort to delete adverbial qualifiers of this kind. We wonder whether subjective judgment about the absence or presence of "malice" or "recklessness" should be required by the language of the charter legislation.

7. These comments aside, the positions proposed in the attachment to reference have DDA support.

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cc: AD-M/NFAC

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